

IC 4-21.5

ARTICLE 21.5. ADMINISTRATIVE ORDERS AND PROCEDURES

IC 4-21.5-1

Chapter 1. Definitions

IC 4-21.5-1-1

Application

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-2

"Administrative law judge"

Sec. 2. "Administrative law judge" refers to an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-3

"Agency"

Sec. 3. "Agency" means any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article. Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government, the legislative department of state government, or a political subdivision.

As added by P.L.18-1986, SEC.1. Amended by P.L.41-1995, SEC.1.

IC 4-21.5-1-4

"Agency action"

Sec. 4. "Agency action" means any of the following:

- (1) The whole or a part of an order.
- (2) The failure to issue an order.
- (3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-5

"Court"

Sec. 5. "Court" means a circuit or superior court responsible for taking any action under this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-6

"Final agency action"

Sec. 6. "Final agency action" means:

- (1) the entry of an order designated as a final order under this article; or
- (2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-7

"Law"

Sec. 7. "Law" means the federal or state constitution, any federal or state statute, a rule of an agency, or a federal regulation.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-8

"License"

Sec. 8. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-9

"Order"

Sec. 9. "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:

- (1) a license; or
- (2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4).

As added by P.L.18-1986, SEC.1. Amended by P.L.42-1995, SEC.1.

IC 4-21.5-1-10

"Party"

Sec. 10. "Party" means:

- (1) a person to whom the agency action is specifically directed; or
- (2) a person expressly designated in the record of the proceeding as a party to the proceeding.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-11

"Person"

Sec. 11. "Person" means an individual, agency, political subdivision, partnership, corporation, limited liability company, association, or other entity of any character.

As added by P.L.18-1986, SEC.1. Amended by P.L.8-1993, SEC.27.

IC 4-21.5-1-12

"Political subdivision"

Sec. 12. "Political subdivision" has the meaning set forth in IC 36-1-2-13.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-13

"Proceeding"

Sec. 13. "Proceeding" refers to a proceeding under this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-1-14

"Rule"

Sec. 14. "Rule" means the whole or any part of an agency statement of general applicability that:

- (1) has or is designed to have the effect of law; and
- (2) implements, interprets, or prescribes:
 - (A) law or policy; or
 - (B) the organization, procedure, or practice requirements of an agency.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.1.

IC 4-21.5-1-15

"Ultimate authority"

Sec. 15. "Ultimate authority" means an individual or panel of individuals in whom the final authority of an agency is vested by law or executive order.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-2

Chapter 2. Application

IC 4-21.5-2-0.1

Application of article; application of previous statute; references to previous statutes

Sec. 0.1. (a) This article governs:

- (1) all proceedings, and all proceedings for judicial review or civil enforcement of agency action, commenced after June 30, 1987; and
- (2) proceedings conducted after June 30, 1987, on remand from a court.

(b) The following are governed by IC 4-22-1 (before its repeal) as it existed on June 30, 1987:

- (1) Any adjudicative proceedings pending on June 30, 1987, and not being conducted on remand after June 30, 1987.
- (2) All judicial review proceedings concerning agency action pending on June 30, 1987.
- (3) All civil enforcement proceedings concerning agency action pending on June 30, 1987.

(c) After June 30, 1987, any reference to Acts 1947, c.365 or IC 4-22-1 in a statute or rule in effect on July 1, 1987, shall be construed as a reference to IC 4-21.5 as effective on July 1, 1987.

As added by P.L.220-2011, SEC.43.

IC 4-21.5-2-1

Minimum rights and duties

Sec. 1. This article creates minimum procedural rights and imposes minimum procedural duties.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-2-2

Waiver of rights and duties

Sec. 2. Except to the extent precluded by a law, a person may waive any right conferred upon that person by this article. This section does not permit the waiver of any procedural duty imposed by this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-2-3

Application of law

Sec. 3. This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise. This article applies (to the extent that a statute other than this article specifically applies this article) to a class of otherwise exempt orders or one (1) or more stages of an otherwise exempt proceeding.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-2-4

Exemptions

Sec. 4. (a) This article does not apply to any of the following agencies:

- (1) The governor.
- (2) The state board of accounts.
- (3) The state educational institutions.
- (4) The department of workforce development.
- (5) The unemployment insurance review board of the department of workforce development.
- (6) The worker's compensation board of Indiana.
- (7) The military officers or boards.
- (8) The Indiana utility regulatory commission.
- (9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).
- (10) The department of local government finance.
- (11) The Indiana board of tax review.

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

As added by P.L.18-1986, SEC.1. Amended by P.L.18-1987, SEC.5; P.L.28-1988, SEC.1; P.L.18-1990, SEC.7; P.L.21-1995, SEC.7; P.L.198-2001, SEC.1; P.L.256-2003, SEC.1; P.L.188-2003, SEC.1; P.L.91-2006, SEC.1; P.L.2-2007, SEC.51; P.L.219-2007, SEC.3.

IC 4-21.5-2-5

Exemptions; agency actions

Sec. 5. This article does not apply to the following agency actions:

- (1) The issuance of a warrant or jeopardy warrant for the collection of taxes.
- (2) A determination of probable cause or no probable cause by the civil rights commission.
- (3) A determination in a factfinding conference of the civil rights commission.
- (4) A personnel action, except review of:
 - (A) a personnel action by the state employees appeals commission under IC 4-15-2.2-42; or
 - (B) a personnel action that is not covered by IC 4-15-2.2 but may be taken only for cause.
- (5) A resolution, directive, or other action of any agency that relates solely to the internal policy, organization, or procedure of that agency or another agency and is not a licensing or enforcement action. Actions to which this exemption applies include the statutory obligations of an agency to approve or ratify an action of another agency.
- (6) An agency action related to an offender within the jurisdiction of the department of correction.
- (7) A decision of the Indiana economic development corporation, the office of tourism development, the department

of environmental management, the tourist information and grant fund review committee (before the repeal of the statute that created the tourist information and grant fund review committee), the Indiana finance authority, the corporation for innovation development, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.

(8) A decision to issue or not issue a complaint, summons, or similar accusation.

(9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.

(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4.1-4-1.5(c)(1).

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke a driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

(17) A determination of status as a member of or participant in an environmental performance based program developed and implemented under IC 13-27-8.

(18) An action of the bureau of motor vehicles subject to review under IC 9-33.

As added by P.L.18-1986, SEC.1. Amended by P.L.29-1988, SEC.1; P.L.3-1989, SEC.23; P.L.35-1989, SEC.1; P.L.1-1990, SEC.34; P.L.23-1990, SEC.1; P.L.11-1990, SEC.103; P.L.10-1991, SEC.6; P.L.2-1991, SEC.20; P.L.11-1991, SEC.20; P.L.12-1995, SEC.95; P.L.21-1995, SEC.8; P.L.2-1996, SEC.211; P.L.172-1999, SEC.10; P.L.4-2005, SEC.19; P.L.229-2005, SEC.1; P.L.235-2005, SEC.60; P.L.1-2006, SEC.70; P.L.161-2006, SEC.1; P.L.100-2006, SEC.1; P.L.1-2007, SEC.16; P.L.6-2012, SEC.16; P.L.69-2015, SEC.2; P.L.198-2016, SEC.6.

IC 4-21.5-2-6

Inapplicability to certain formulation, issuance, and administrative review

Sec. 6. This article does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of any of the following:

- (1) Except as provided in IC 12-17.2-4-18.7 and IC 12-17.2-5-18.7, determinations by the division of family resources and the department of child services.
- (2) Determinations by the alcohol and tobacco commission.
- (3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

As added by P.L.18-1986, SEC.1. Amended by P.L.2-1992, SEC.37; P.L.23-1992, SEC.1; P.L.1-1993, SEC.20; P.L.204-2001, SEC.5; P.L.198-2001, SEC.2; P.L.1-2002, SEC.9; P.L.241-2003, SEC.1; P.L.234-2005, SEC.1; P.L.219-2007, SEC.4.

IC 4-21.5-3

Chapter 3. Adjudicative Proceedings

IC 4-21.5-3-1

Service of process; notice by publication

Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item;
- or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section 6 of this chapter.
- (2) A petition for review of an agency action under section 7 of this chapter.
- (3) A complaint under section 8 of this chapter.

(d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

- (1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or
- (2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is

outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(g) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority:

(A) under subsection (b) or (c); and

(B) in compliance with subsection (e).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.2; P.L.33-1989, SEC.2; P.L.35-1989, SEC.2; P.L.32-2011, SEC.1; P.L.6-2012, SEC.17; P.L.152-2012, SEC.4.

IC 4-21.5-3-2

Time computation

Sec. 2. (a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:

(1) a Saturday;

(2) a Sunday;

(3) a legal holiday under a state statute; or

(4) a day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subsection (a)(1) through (a)(4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

(c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:

(1) the person is personally served with the notice; or

(2) a notice for the person is deposited in the United States mail.

(d) If section 1(f) of this chapter applies, a period of time under this article commences when a notice for the person is published in

a newspaper.

(e) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

As added by P.L.18-1986, SEC.1. Amended by P.L.32-2011, SEC.2.

IC 4-21.5-3-3

Notice of orders; additional proceedings; effectiveness; stays

Sec. 3. (a) An agency shall give notice concerning an order under section 4, 5, 6, or 8 of this chapter. An agency shall conduct additional proceedings under this chapter if required by section 7 or 8 of this chapter. However, IC 4-21.5-4 applies to the notice and proceedings necessary for emergency and other temporary orders.

(b) Notwithstanding IC 1-1-4-1, if:

- (1) a panel of individuals responsible for an agency action has a quorum of its members present, as specified by law; and
- (2) a statute other than IC 1-1-4-1 does not specify the number of votes necessary to take an agency action;

the panel may take the action by an affirmative vote of a majority of the members present and voting. For the purposes of this subsection, a member abstaining on a vote is not voting on the action.

(c) An order is effective when it is issued as a final order under this chapter, except to the extent that:

- (1) a different date is set by this article;
- (2) a later date is set by an agency in its order; or
- (3) an order is stayed.

(d) After an order becomes effective, an agency may suspend the effect of an order, in whole or in part, by staying the order under this chapter.

(e) A party to an order may be required to comply with an order only after the party has been served with the order or has actual knowledge of the order.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.3.

IC 4-21.5-3-4

Notice required; licenses and personnel decisions; persons who must be notified; contents

Sec. 4. (a) Notice must be given under this section concerning the following:

- (1) The denial of a driver's license by the bureau of motor vehicles under IC 9.
- (2) The grant, renewal, restoration, transfer, or denial of a noncommercial fishing or hunting license by the department of natural resources under IC 14.
- (3) The grant, renewal, restoration, transfer, or denial of a license by an entity described in IC 25-0.5-9.
- (4) The grant, renewal, suspension, revocation, or denial of a certificate of registration under IC 25-5.2.

(5) A personnel decision by an agency.
(6) The grant, renewal, restoration, transfer, or denial of a license by the department of environmental management or the commissioner of the department under the following:

(A) Environmental management laws (as defined in IC 13-11-2-71) for the construction, installation, or modification of:

- (i) sewers and appurtenant facilities, devices, or structures for the collection and transport of sewage (as defined in IC 13-11-2-200) or storm water to a storage or treatment facility or to a point of discharge into the environment; or
- (ii) pipes, pumps, and appurtenant facilities, devices, or structures that are part of a public water system (as defined in IC 13-11-2-177.3) and that are used to transport water to a storage or treatment facility or to distribute water to the users of the public water system;

where a federal, state, or local governmental body has given or will give public notice and has provided or will provide an opportunity for public participation concerning the activity that is the subject of the license.

(B) Environmental management laws (as defined in IC 13-11-2-71) for the registration of a device or a piece of equipment.

(C) IC 13-17-6-1 for a person to engage in the inspection, management, and abatement of asbestos containing material.

(D) IC 13-18-11 for a person to operate a wastewater treatment plant.

(E) IC 13-15-10 for a person to operate the following:

- (i) A solid waste incinerator or a waste to energy facility.
- (ii) A land disposal site.
- (iii) A facility described under IC 13-15-1-3 whose operation could have an adverse impact on the environment if not operated properly.

(F) IC 13-20-4 for a person to operate a municipal waste collection and transportation vehicle.

(b) When an agency issues an order described by subsection (a), the agency shall give a written notice of the order to the following persons:

- (1) Each person to whom the order is specifically directed.
- (2) Each person to whom a law requires notice to be given.

A person that is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party on the record of the proceeding.

(c) The notice must include the following:

- (1) A brief description of the order.
- (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under

section 7 of this chapter.

(3) Any information required by law.

(d) An order under this section is effective when it is served. However, if a timely and sufficient application has been made for renewal of a license described by subsection (a)(3) and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of the proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing under IC 4-21.5-4 an emergency or other temporary order with respect to the license.

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person that has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person that has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1989, SEC.3; P.L.25-1991, SEC.1; P.L.33-1993, SEC.1; P.L.1-1996, SEC.25; P.L.54-2001, SEC.2; P.L.184-2002, SEC.1; P.L.3-2014, SEC.3; P.L.198-2016, SEC.7.

IC 4-21.5-3-5

Notice required; certain licensing and other decisions; persons who must be notified; contents; effectiveness of order; stays

Sec. 5. (a) Notice shall be given under this section concerning the following:

- (1) The grant, renewal, restoration, transfer, or denial of a license not described by section 4 of this chapter.
- (2) The approval, renewal, or denial of a loan, grant of property or services, bond, financial guarantee, or tax incentive.
- (3) The grant or denial of a license in the nature of a variance or exemption from a law.
- (4) The determination of tax due or other liability.
- (5) A determination of status.
- (6) Any order that does not impose a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest.

(b) When an agency issues an order described in subsection (a), the agency shall give a written notice of the order to the following persons:

- (1) Each person to whom the order is specifically directed.
- (2) Each person to whom a law requires notice to be given.
- (3) Each competitor who has applied to the agency for a mutually exclusive license, if issuance is the subject of the order and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted.
- (4) Each person who has provided the agency with a written request for notification of the order, if the request:
 - (A) describes the subject of the order with reasonable particularity; and
 - (B) is delivered to the agency at least seven (7) days before the day that notice is given under this section.
- (5) Each person who has a substantial and direct proprietary interest in the subject of the order.
- (6) Each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may:
 - (A) as a practical matter impair or impede the person's ability to protect that interest; or
 - (B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice required by subsection (a) must include the following:

- (1) A brief description of the order.
 - (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.
 - (3) A brief explanation of how the person may obtain notices of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings without intervening in the proceeding, if a petition for review is granted under section 7 of this chapter.
 - (4) Any other information required by law.
- (d) An agency issuing an order under this section or conducting an administrative review of the order shall give notice of any:
- (1) prehearing conference;
 - (2) preliminary hearing;
 - (3) hearing;
 - (4) stay; or

(5) order disposing of all proceedings; concerning the order to a person notified under subsection (b) who requests these notices in the manner specified under subsection (c)(3).

(e) If a statute requires an agency to solicit comments from the public in a nonevidentiary public hearing before issuing an order described by subsection (a), the agency shall announce at the opening and the close of the public hearing how a person may receive notice of the order under subsection (b)(4).

(f) If a petition for review and a petition for stay of effectiveness of an order described in subsection (a) has not been filed, the order is effective fifteen (15) days (or any longer period during which a person may, by statute, seek administrative review of the order) after the order is served. If both a petition for review and a petition for stay of effectiveness are filed before the order becomes effective, any part of the order that is within the scope of the petition for stay is stayed for an additional fifteen (15) days. Any part of the order that is not within the scope of the petition is not stayed. The order takes effect regardless of whether the persons described by subsection (b)(5) or (b)(6) have been served. An agency shall make a good faith effort to identify and notify these persons, and the agency has the burden of persuasion that it has done so. The agency may request that the applicant for the order assist in the identification of these persons. Failure to notify any of these persons is not grounds for invalidating an order, unless an unnotified person is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the unnotified person.

(g) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of a proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license.

(h) On the motion of any party or other person having a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued before or after the order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties, any person who has a pending petition for intervention in the proceeding, and any person who has requested notice under subsection (d). It must include a statement of the facts and law on which it is based.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.4.

IC 4-21.5-3-6

Notice required; persons who must receive notice; contents; effective date; stay, preliminary hearing, and resulting order

Sec. 6. (a) Notice shall be given under this section concerning the following:

- (1) A safety order under IC 22-8-1.1.
- (2) Any order that:
 - (A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;
 - (B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and
 - (C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.
- (3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.
- (4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.
- (5) A license suspension or revocation under:
 - (A) IC 24-4.4-2;
 - (B) IC 24-4.5-3;
 - (C) IC 28-1-29;
 - (D) IC 28-7-5;
 - (E) IC 28-8-4; or
 - (F) IC 28-8-5.
- (6) An order issued by the secretary or the secretary's designee against providers regulated by the division of aging or the bureau of developmental disabilities services and not licensed by the state department of health under IC 16-27 or IC 16-28.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

- (1) Each person to whom the order is specifically directed.
- (2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

- (1) A brief description of the order.
- (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under

section 7 of this chapter.

(3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.5; P.L.42-1995, SEC.2; P.L.80-1998, SEC.1; P.L.35-2010, SEC.1; P.L.153-2011, SEC.1; P.L.186-2015, SEC.1; P.L.35-2016, SEC.1.

IC 4-21.5-3-7

Review; petition; denial of petition; preliminary hearing

Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2.2 applies, a person must comply with IC 4-15-2.2-42. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action,

or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), or 6(a)(5) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.6; P.L.42-1995, SEC.3; P.L.2-1997, SEC.11; P.L.222-2005, SEC.22; P.L.213-2007, SEC.1; P.L.217-2007, SEC.1; P.L.6-2012, SEC.18.

IC 4-21.5-3-8

Sanctions; temporary orders

Sec. 8. (a) An agency may issue a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest not described by section 4, 5, or 6 of this chapter only after conducting a proceeding under this chapter. However, this subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of the proceeding.

(b) When an agency seeks to issue an order that is described by subsection (a), the agency shall serve a complaint upon:

- (1) each person to whom any resulting order will be specifically directed; and
- (2) any other person required by law to be notified.

A person notified under this subsection is not a party to the proceeding unless the person is a person against whom any resulting order will be specifically directed or the person is designated by the agency as a party in the record of the proceeding.

(c) The complaint required by subsection (b) must include the following:

- (1) A short, plain statement showing that the pleader is entitled to an order.
- (2) A demand for the order that the pleader seeks.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-8.5

Sharing administrative law judges among agencies; information concerning administrative law judges

Sec. 8.5. (a) An agency may share an administrative law judge with another agency:

- (1) to avoid bias, prejudice, interest in the outcome, or another conflict of interest;
- (2) if a party requests a change of administrative law judge;
- (3) to ease scheduling difficulties; or
- (4) for another good cause.

An agency may adopt rules under IC 4-22-2 to implement this subsection.

(b) To the extent practicable, an administrative law judge must have expertise in the area of law being adjudicated.

(c) An agency shall post on the agency's Internet web site the:

- (1) name;
- (2) salary and other remuneration; and
- (3) relevant professional experience;

of every person who serves as an administrative law judge for the agency.

As added by P.L.72-2014, SEC.3.

IC 4-21.5-3-9

Ultimate authority of agency; acting as or designating an administrative judge; disqualification; procedures

Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

- (1) act as an administrative law judge;
- (2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or
- (3) designate one (1) or more:
 - (A) attorneys licensed to practice law in Indiana; or
 - (B) persons who served as administrative law judges for a state agency before January 1, 2014;to act as an administrative law judge.

A person designated under subdivision (3) is not required to be an employee of the agency. A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with

others as an administrative law judge shall:

- (1) withdraw as the administrative law judge; or
- (2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

(e) If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

(f) Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

(g) If there is a reasonable likelihood that the ultimate authority will be called upon to:

- (1) review; or
- (2) issue a final order with respect to;

a matter pending before or adjudicated by an administrative law judge, the provisions of section 11 of this chapter that apply to an administrative law judge or to a person communicating with an administrative law judge apply to a member of the ultimate authority and to a person communicating with a member of the ultimate authority.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.7; P.L.72-2014, SEC.4.

IC 4-21.5-3-10

Disqualification of administrative law judge

Sec. 10. (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of a proceeding;
- (2) failure to dispose of the subject of a proceeding in an

orderly and reasonably prompt manner after a written request by a party;

(3) unless waived or extended with the written consent of all parties or for good cause shown, failure to issue an order not later than ninety (90) days after the latest of:

(A) the filing of a motion to dismiss or a motion for summary judgment under section 23 of this chapter that is filed after June 30, 2011;

(B) the conclusion of a hearing that begins after June 30, 2011; or

(C) the completion of any schedule set for briefing or for submittal of proposed findings of fact and conclusions of law for a disposition under clauses (A) or (B); or

(4) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge.

(b) This subsection does not apply to a proceeding concerning a regulated occupation (as defined in IC 25-1-7-1), except for a proceeding concerning a water well driller (as described in IC 25-39-3) or an out of state mobile health care entity regulated by the state department of health. An individual who is disqualified under subsection (a)(2) or (a)(3) shall provide the parties a list of at least three (3) special administrative law judges who meet the requirements of:

(1) IC 4-21.5-7-6, if the case is pending in the office of environmental adjudication;

(2) IC 14-10-2-2, if the case is pending before the division of hearings of the natural resources commission; or

(3) any other statute or rule governing qualification to serve an agency other than those described in subdivision (1) or (2).

Subject to subsection (c), the parties may agree to the selection of one (1) individual from the list.

(c) If the parties do not agree to the selection of an individual as provided in subsection (b) not later than ten (10) days after the parties are provided a list of judges under subsection (b), a special administrative law judge who meets the requirements of subsection (b) shall be selected under the procedure set forth in Trial Rule 79(D), 79(E), or 79(F).

As added by P.L.18-1986, SEC.1. Amended by P.L.32-2011, SEC.3.

IC 4-21.5-3-11

Ex parte communications; violations

Sec. 11. (a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

(1) any party;

- (2) any individual who has a direct or indirect interest in the outcome of the proceeding;
- (3) any individual who presided at a previous stage of the proceeding; or
- (4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

- (1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or
- (2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

- (1) place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and
- (2) advise all parties that these matters have been placed on the record.

Any person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) shall be allowed to rebut a charge of wrongful ex parte communication upon requesting the opportunity for rebuttal within fifteen (15) days after notice of the communication.

(f) If necessary to eliminate the effect of an ex parte communication received in violation of this section, an administrative law judge who receives the communication may be disqualified and the portions of the record pertaining to the

communication may be corrected, modified, or preserved by protective order.

(g) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.8.

IC 4-21.5-3-12

Administrative law judge; prohibited acts; disqualification

Sec. 12. An administrative law judge who:

(1) comments publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or

(2) engages in financial or business dealings that tend to:

(A) reflect adversely on the administrative law judge's impartiality;

(B) interfere with the proper performance of the administrative law judge's duties;

(C) exploit the administrative law judge's position; or

(D) involve the administrative law judge in frequent financial or business dealings with attorneys or other persons

who are likely to come before the administrative law judge;

is subject to disqualification. A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-13

Disqualification; involvement in preadjudicative stage

Sec. 13. (a) An individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(b) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(c) An individual who has made a determination of probable cause or other equivalent preliminary determination in a proceeding may serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(d) An individual may serve as an administrative law judge or a person presiding under sections 28, 29, 30, and 31 of this chapter at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(e) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-14

Record; hearing on motion; burden of proof; standard of review

Sec. 14. (a) An administrative law judge conducting a proceeding shall keep a record of the administrative law judge's proceedings under this article.

(b) If a motion is based on facts not otherwise appearing in the record for the proceeding, the administrative law judge may hear the matter on affidavits presented by the respective parties or the administrative law judge may direct that the matter be heard wholly or partly on oral testimony or depositions.

(c) At each stage of the proceeding, the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense. Before the hearing on which the party intends to assert it, a party shall, to the extent possible, disclose any affirmative defense specified by law on which the party intends to rely. If a prehearing conference is held in the proceeding, a party notified of the conference shall disclose the party's affirmative defense in the conference.

(d) The proceedings before an administrative law judge are de novo.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.9; P.L.32-2011, SEC.4.

IC 4-21.5-3-15

Participation in proceeding

Sec. 15. (a) Any party may participate in a proceeding in person or, if the party is not an individual or is incompetent to participate, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative.

As added by P.L.18-1986, SEC.1. Amended by P.L.33-1989, SEC.3.

IC 4-21.5-3-16

Interpreters

Sec. 16. (a) A person who:

(1) cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons; and

(2) is a party or witness in any proceeding under this article; is entitled to an interpreter to assist the person throughout the proceeding under this article.

(b) The interpreter may be retained by the person or may be appointed by the agency before which the proceeding is pending. If

an interpreter is appointed by the agency, the fee for the services of the interpreter shall be set by the agency. The fee shall be paid from any funds available to the agency or be paid in any other manner ordered by the agency.

(c) Any agency may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving as an interpreter.

(d) Every interpreter for another person in a proceeding shall take the following oath:

Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (or her), the questions that may be asked him (or her), and the answers that he (or she) shall give to the questions, relative to the cause now under consideration before this agency?

(e) IC 35-44.1-2-1 concerning perjury applies to an interpreter.
As added by P.L.18-1986, SEC.1. Amended by P.L.126-2012, SEC.13; P.L.215-2016, SEC.89.

IC 4-21.5-3-17

Opportunity to file documents; copies

Sec. 17. (a) The administrative law judge, at appropriate stages of a proceeding, shall give all parties full opportunity to file pleadings, motions, and objections and submit offers of settlement.

(b) The administrative law judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, proposed findings of fact, and proposed orders.

(c) A party shall serve copies of any filed item on all parties.

(d) The administrative law judge shall serve copies of all notices, orders, and other papers generated by the administrative law judge on all parties. The administrative law judge shall give notice of preliminary hearings, prehearing conferences, hearings, stays, and orders disposing of the proceeding to persons described by section 5(d) of this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-18

Prehearing conference; notice

Sec. 18. (a) The administrative law judge for the hearing, subject to the agency's rules, may, on the administrative law judge's own motion, and shall, on the motion of a party, conduct a prehearing conference. The administrative law judge may deny a motion for a prehearing conference if the administrative law judge has previously conducted a prehearing conference in the proceeding.

(b) This section and section 19 of this chapter apply if the conference is conducted.

(c) The administrative law judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to the following:

- (1) All parties.
- (2) All persons who have filed written petitions to intervene in the matter.
- (3) All persons entitled to notice under any law.
- (d) The initial prehearing conference notice in a proceeding must include the following:
 - (1) The names and mailing addresses of all known parties and other persons to whom notice is being given by the administrative law judge.
 - (2) The names and mailing addresses of all publications used to provide notice under this section.
 - (3) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.
 - (4) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.
 - (5) A statement of the time, place, and nature of the prehearing conference.
 - (6) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.
 - (7) The name, official title, and mailing address of the administrative law judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.
 - (8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.
- (e) Any subsequent prehearing conference notice in the proceeding may omit the information described in subsections (d)(1), (d)(2), (d)(3), (d)(6), and (d)(8).
- (f) Any notice under this section may include any other matters that the administrative law judge considers desirable to expedite the proceedings.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.10.

IC 4-21.5-3-19

Prehearing conference; electronic means; matters considered; prehearing order on pleadings

Sec. 19. (a) This section and section 18 of this chapter apply to prehearing conferences.

(b) To expedite a decision on pending motions and other issues, the administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity:

- (1) to participate in;
- (2) to hear; and

(3) if technically feasible, to see;
the entire proceeding while it is taking place.

(c) The administrative law judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as the following:

- (1) Resolution of the issues in the proceeding under section 23 of this chapter.
- (2) Exploration of settlement possibilities.
- (3) Preparation of stipulations.
- (4) Clarification of issues.
- (5) Rulings on identity and limitation of the number of witnesses.
- (6) Objections to proffers of evidence.
- (7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.
- (8) The order of presentation of evidence and cross-examination.
- (9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.
- (10) Such other matters as will promote the orderly and prompt conduct of the hearing.

The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(d) If a prehearing conference is not held, the administrative law judge for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-20

Hearing; time and place; notice

Sec. 20. (a) The administrative law judge for the hearing shall set the time and place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall give at least five (5) days notice of the hearing.

(b) The notice must include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it the initial hearing notice in a proceeding must include the following:

- (1) The names and mailing addresses of all parties and other persons to whom notice is being given by the administrative law judge.
- (2) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency

and a telephone number through which the counsel or employee can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the hearing.

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(6) The name, official title, and mailing address of the administrative law judge and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement of the issues involved and, to the extent known to the administrative law judge, of the matters asserted by the parties.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(d) Subsequent hearing notices in the proceeding may omit the information described in subsections (c)(1), (c)(2), (c)(5), and (c)(8).

(e) Any notice under this section may include any other matters the administrative law judge considers desirable to expedite the proceedings.

(f) The administrative law judge shall give notice to persons other than parties and petitioners for intervention who are entitled to notice under any law. Notice under this subsection may include all types of information provided in subsections (a) through (e) or may consist of a brief statement indicating:

(1) the subject matter, parties, time, place, and nature of the hearing;

(2) the manner in which copies of the notice to the parties may be inspected and copied;

(3) the name of the administrative law judge; and

(4) a telephone number through which information concerning proceeding hearing schedules and procedures may be obtained.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.11.

IC 4-21.5-3-21

Petition for intervention

Sec. 21. (a) Before the beginning of the hearing on the subject of the proceeding, the administrative law judge shall grant a petition for intervention in a proceeding and identify the petitioner in the record of the proceeding as a party if:

(1) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding; and

(B) states facts demonstrating that a statute gives the

petitioner an unconditional right to intervene in the proceeding; or

(2) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding, at least three (3) days before the hearing; and

(B) states facts demonstrating that the petitioner is aggrieved or adversely affected by the order or a statute gives the petitioner a conditional right to intervene in the proceeding.

(b) The administrative law judge, at least twenty-four (24) hours before the beginning of the hearing, shall issue an order granting or denying each pending petition for intervention.

(c) After the beginning of the hearing on the subject of the proceeding, but before the close of evidence in the hearing, anyone may be permitted to intervene in the proceeding if:

(1) a statute confers a conditional right to intervene or an applicant's claim or defense and the main action have a question of law or fact in common; and

(2) the administrative law judge determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

In exercising its discretion, the administrative law judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the legal interests of any of the parties.

(d) An order granting or denying a petition for intervention must specify any condition and briefly state the reasons for the order. The administrative law judge may modify the order at any time, stating the reasons for the modification. The administrative law judge shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.12.

IC 4-21.5-3-22

Administrative orders; enforcement

Sec. 22. (a) The administrative law judge at the request of any party or an agency shall, and upon the administrative law judge's own motion may, issue:

(1) subpoenas;

(2) discovery orders; and

(3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. If ordered by the administrative law judge, the sheriff in the county in which the order is to be served shall serve the subpoena, discovery order, or protective order.

(c) Subpoenas and orders issued under this section may be enforced under IC 4-21.5-6.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-23

Summary judgment

Sec. 23. (a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding.

(b) Except as otherwise provided in this section, an administrative law judge shall consider a motion filed under subsection (a) as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure.

(c) Service of the motion and any response to the motion, including supporting affidavits, shall be performed as provided in this article.

(d) Sections 28 and 29 of this chapter apply to an order granting summary judgment that disposes of all issues in a proceeding.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.13; P.L.5-1988, SEC.27; P.L.32-2011, SEC.5.

IC 4-21.5-3-24

Default or dismissal

Sec. 24. (a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall

determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

As added by P.L.18-1986, SEC.1. Amended by P.L.72-2014, SEC.5.

IC 4-21.5-3-25

Conduct of hearing; procedure

Sec. 25. (a) This section and section 26 of this chapter govern the conduct of any hearing held by an administrative law judge.

(b) The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.

(c) To the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(d) The administrative law judge may, after a prehearing order is issued under section 19 of this chapter, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as the following:

(1) Limiting the party's participation to designated issues in which the party has a particular interest demonstrated by the petition.

(2) Limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.

(3) Requiring two (2) or more parties to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

If a person is allowed to intervene in the proceeding after the commencement of a hearing under this section, the administrative law judge may prohibit the intervener from recalling any witness who has been heard or reopening any matter that has been resolved, unless the intervener did not receive a notice required by this chapter or the intervener presents facts that demonstrate that fraud, perjury, or an abuse of discretion has occurred. Any proceedings conducted before the giving of a notice required by this chapter are voidable upon the motion of the party who failed to receive the notice.

(e) The administrative law judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(f) The administrative law judge may give nonparties an opportunity to present oral or written statements. If the administrative law judge proposes to consider a statement by a nonparty, the judge shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the judge shall require the

statement to be given under oath or affirmation.

(g) The administrative law judge shall have the hearing recorded at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless required to do so by law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. Notwithstanding IC 5-14-3-8, an agency may charge a person who requests that an agency provide a transcript (other than for judicial review under IC 4-21.5-5-13) the reasonable costs of preparing the transcript.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-26

Conduct of hearing; evidence

Sec. 26. (a) This section and section 25 of this chapter govern the conduct of any hearing conducted by an administrative law judge. Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the administrative law judge may exclude objectionable evidence. The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of parties and witnesses must be made under oath or affirmation.

(c) Statements presented by nonparties in accordance with section 25 of this chapter may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(f) Official notice may be taken of the following:

- (1) Any fact that could be judicially noticed in the courts.
- (2) The record of other proceedings before the agency.
- (3) Technical or scientific matters within the agency's specialized knowledge.
- (4) Codes or standards that have been adopted by an agency of the United States or this state.

(g) Parties must be:

- (1) notified before or during the hearing, or before the issuance

of any order that is based in whole or in part on facts or material noticed under subsection (f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and

(2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (f).

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-27

Final orders; findings of fact and conclusions of law

Sec. 27. (a) If the administrative law judge is the ultimate authority for the agency, the ultimate authority's order disposing of a proceeding is a final order. If the administrative law judge is not the ultimate authority, the administrative law judge's order disposing of the proceeding becomes a final order when affirmed under section 29 of this chapter. Regardless of whether the order is final, it must comply with this section.

(b) This subsection applies only to an order not subject to subsection (c). The order must include, separately stated, findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(c) This subsection applies only to an order of the ultimate authority entered under IC 13, IC 14, or IC 25. The order must include separately stated findings of fact and, if a final order, conclusions of law for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Conclusions of law must consider prior final orders (other than negotiated orders) of the ultimate authority under the same or similar circumstances if those prior final orders are raised on the record in writing by a party and must state the reasons for deviations from those prior orders. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(d) Findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The administrative law judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(e) A substitute administrative law judge may issue the order

under this section upon the record that was generated by a previous administrative law judge.

(f) The administrative law judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) An order under this section shall be issued in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f), unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The administrative law judge shall have copies of the order under this section delivered to each party and to the ultimate authority for the agency (if it is not rendered by the ultimate authority).

As added by P.L.18-1986, SEC.1. Amended by P.L.25-1997, SEC.1; P.L.2-1998, SEC.10.

IC 4-21.5-3-28

Final order; authority to issue; proceedings

Sec. 28. (a) This section applies to proceedings under sections 29, 30, and 31 of this chapter.

(b) The ultimate authority or its designee shall conduct proceedings to issue a final order. A designee may be selected in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be selected for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(c) Any individual serving alone or with others in a proceeding may be disqualified for any of the reasons that an administrative law judge may be disqualified. The procedures in section 9 of this chapter apply to the disqualification and substitution of the individual.

(d) Motions and petitions submitted by a party to the ultimate authority shall be served on each party to the proceeding and to any person described by section 5(d) of this chapter.

(e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) have a transcript prepared, at the agency's expense, of any portion of the record of a proceeding that the ultimate authority or its designee considers necessary;
- (3) exercise the powers of an administrative law judge to hear additional evidence under sections 25 and 26 of this chapter; or
- (4) allow nonparties to participate in a proceeding in accordance with section 25 of this chapter.

Sections 15 and 16 of this chapter concerning representation and

interpreters apply to the proceedings of the ultimate authority or its designee.

(f) Notices and orders of the ultimate authority or its designee shall be served on all parties and all other persons who have requested notice under section 5 of this chapter.

(g) The final order of the ultimate authority or its designee must:

(1) identify any differences between the final order and the nonfinal order issued by the administrative law judge under section 27 of this chapter;

(2) include findings of fact meeting the standards of section 27 of this chapter or incorporate the findings of fact in the administrative law judge's order by express reference to the order; and

(3) briefly explain the available procedures and time limit for seeking administrative review of the final order by another agency under section 30 of this chapter (if any is available).

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-29

Orders from other than ultimate authority; review by ultimate authority; objections

Sec. 29. (a) This section does not apply if the administrative law judge issuing an order under section 27 of this chapter is the ultimate authority for the agency.

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

(1) affirming;

(2) modifying; or

(3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate

authority or its designee intends to review.

(f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

- (1) the date that the order was issued under section 27 of this chapter;
- (2) the receipt of briefs; or
- (3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

(g) After remand of an order under this section to an administrative law judge, the judge's order is also subject to review under this section.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-30

Review by another agency

Sec. 30. If, under a statute, an agency may review the final order of another agency, the review shall be treated as if it was a continuous proceeding before a single agency. For the purposes of this review and the application of section 3 of this chapter concerning the effectiveness of an order, a final order of the first agency shall be treated as a nonfinal order of an administrative law judge, and the second agency shall review the order under section 29 of this chapter. To preserve an issue for judicial review, a party must comply with section 29(d) of this chapter before the second agency. The ultimate authority for the second agency or its designee may conduct proceedings under section 31 of this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-31

Modification of final order

Sec. 31. (a) An agency has jurisdiction to modify a final order under this section before the earlier of the following:

- (1) Thirty (30) days after the agency has served the final order under section 27, 29, or 30 of this chapter.
- (2) Another agency assumes jurisdiction over the final order under section 30 of this chapter.
- (3) A court assumes jurisdiction over the final order under IC 4-21.5-5.

(b) A party may petition the ultimate authority for an agency for a stay of effectiveness of a final order. The ultimate authority or its designee may, before or after the order becomes effective, stay the final order in whole or in part.

(c) A party may petition the ultimate authority for an agency for a rehearing of a final order. The ultimate authority or its designee may grant a petition for rehearing only if the petitioning party demonstrates that:

- (1) the party is not in default under this chapter;
- (2) newly discovered material evidence exists; and
- (3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence. If the rehearing is conducted by a person other than the ultimate authority, section 29 of this chapter applies to review of the order resulting from the rehearing.

(d) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected by an ultimate authority or its designee on the motion of any party or on the motion of the ultimate authority or its designee.

(e) An action of a petitioning party or an agency under this section neither tolls the period in which a party may object to a second agency under section 30 of this chapter nor tolls the period in which a party may petition for judicial review under IC 4-21.5-5. However, if a rehearing is granted under subsection (c), these periods are tolled and a new period begins on the date that a new final order is served. *As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.14.*

IC 4-21.5-3-32

Final orders; public inspection; indexing; deletions; precedent

Sec. 32. (a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3. The agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed. An agency shall delete from these orders identifying details to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order.

(b) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in subsection (a). However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.15.

IC 4-21.5-3-33

Records

Sec. 33. (a) An agency shall maintain an official record of each proceeding under this chapter.

(b) The agency record of the proceeding consists only of the following:

- (1) Notices of all proceedings.
- (2) Any prehearing order.

- (3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- (4) Evidence received or considered.
- (5) A statement of matters officially noticed.
- (6) Proffers of proof and objections and rulings on them.
- (7) Proposed findings, requested orders, and exceptions.
- (8) The record prepared for the administrative law judge or for the ultimate authority or its designee under sections 28 through 31 of this chapter, at a hearing, and any transcript of the record considered before final disposition of the proceeding.
- (9) Any final order, nonfinal order, or order on rehearing.
- (10) Staff memoranda or data submitted to the administrative law judge or a person presiding in a proceeding under sections 28 through 31 of this chapter.
- (11) Matters placed on the record after an ex parte communication.

(c) Except to the extent that a statute provides otherwise, the agency record described by subsection (b) constitutes the exclusive basis for agency action in proceedings under this chapter and for judicial review of a proceeding under this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-34

Informal procedures; rules; final orders

Sec. 34. (a) An agency is encouraged to develop informal procedures that are consistent with this article and make unnecessary more elaborate proceedings under this article.

(b) An agency may adopt rules, under IC 4-22-2, setting specific procedures to facilitate informal settlement of matters. The procedures must be consistent with this article.

(c) This section does not require any person to settle a matter under the agency's informal procedures.

(d) This subsection does not apply to a proceeding before the state ethics commission (created by IC 4-2-6-2) or a proceeding concerning a regulated occupation (as defined in IC 25-1-7-1), except for a proceeding concerning a water well driller (as described in IC 25-39-3) or an out of state mobile health care entity regulated by the state department of health. When a matter is settled without the need for more elaborate proceedings under this section, the ultimate authority or its designee shall issue the order agreed to by the parties as a final order under this article.

(e) When the final order referred to in subsection (d) involves the modification of a permit issued under IC 13, the administrative law judge:

- (1) shall remand the permit to the issuing agency with instructions to modify the permit in accordance with the final order; and
- (2) retains jurisdiction over any appeals of the modified permit.

Only those terms of the permit that are the subject of the final order shall be modified and subject to public notice and comment.

(f) Any petition for administrative review under this chapter concerning permit modification under subsection (e) is limited to only those terms of the permit modified in accordance with the final order issued under subsection (d).

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.16; P.L.32-2011, SEC.6.

IC 4-21.5-3-35

Additional procedural rights; rules

Sec. 35. An agency may grant procedural rights to persons in addition to those conferred by this article so long as the rights conferred upon other persons by any law are not substantially prejudiced. The agency may adopt rules, under IC 4-22-2, concerning the nature and requirements of all procedures for requesting a proceeding or engaging in a proceeding, so long as the rules are not inconsistent with this article.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-36

Persons presiding in proceedings; violations

Sec. 36. An individual who:

- (1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter; and
- (2) knowingly or intentionally violates section 11, 12, or 13 of this chapter;

commits a Class A misdemeanor.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-37

Aiding in violation

Sec. 37. A person who:

- (1) aids, induces, or causes an individual serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter to violate section 11, 12, or 13 of this chapter; and
- (2) acts with the intent to:
 - (A) have the individual described in subdivision (1) disqualified from serving in a proceeding; or
 - (B) influence the individual described in subdivision (1) with respect to any issue in a proceeding;

commits a Class A misdemeanor.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3.5

Chapter 3.5. Mediation

IC 4-21.5-3.5-1

Mediation guidelines; procedural rights; rules

Sec. 1. (a) Except as provided in subsections (b) and (c), the mediation guidelines adopted by rule under this chapter must supplement the procedural rights established by this article.

(b) An agency described in IC 4-21.5-2-4 that is exempt from administrative orders and procedures required under IC 4-21.5 may adopt rules consistent with this chapter for the use of mediation to resolve proceedings.

(c) An agency may elect to use the mediation provisions of this chapter for determinations described in IC 4-21.5-2-6 that are exempt from the administrative orders and procedures required under IC 4-21.5.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-2

Appropriateness of mediation; rules

Sec. 2. (a) For each type of administrative proceeding, the ultimate authority shall determine whether mediation is an appropriate means of alternative dispute resolution.

(b) For proceedings that an ultimate authority determines to be appropriate for mediation, the agency may adopt rules under IC 4-22-2 to implement this chapter. The rules, to the extent possible, shall not be inconsistent with Rule 2 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-3

Agreement to mediate

Sec. 3. Before a proceeding is initiated, an agency and a person who may be the subject of an agency action may agree to use mediation to resolve a dispute.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-4

Immunity of mediator

Sec. 4. A mediator, co-mediator, or team mediator appointed and acting under this chapter has immunity in the same manner and to the same extent as a judge having jurisdiction in Indiana.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-5

Selection of proceeding for mediation; objections

Sec. 5. (a) If a proceeding is of a type that has been identified as appropriate for alternative dispute resolution under section 2 of this

chapter, the administrative law judge assigned to the proceeding may, on the administrative law judge's own motion or upon motion of any party, select the proceeding for mediation.

(b) Not more than fifteen (15) days after an order of selection for mediation, a party may object by filing a written objection specifying the grounds. The administrative law judge shall promptly consider an objection to mediation and any response to the objection and shall reconsider whether the proceeding is appropriate for mediation.

(c) In considering an order for mediation under this section, the administrative law judge shall consider:

- (1) the willingness of the parties to mutually resolve their dispute;
- (2) the ability of the parties to participate in the mediation process;
- (3) the need for discovery and the extent to which it has been conducted; and
- (4) any other factors that affect the potential for fair resolution of the dispute through the mediation process.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-6

Selection of mediator by agreement of parties

Sec. 6. (a) If a proceeding is conducted by mediation, the administrative law judge assigned to the proceeding shall within fifteen (15) days after the date of the order for mediation make available to the parties, at no cost, a mediator who is qualified under section 8 of this chapter, or the parties may elect to use, at their own cost, an outside mediator who is:

- (1) qualified under section 8 of this chapter; and
- (2) approved by the administrative law judge assigned to the proceeding.

(b) If a mediator is not selected by agreement or choice under subsection (a), the administrative law judge assigned to the proceeding shall designate three (3) mediators from the approved list of mediators described in subsection 7(d) and allow fifteen (15) days for alternate striking by each side. The party initiating the proceeding shall strike first. The mediator remaining after the striking process is the mediator.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-7

Application to mediate; list of approved mediators

Sec. 7. (a) A person, other than agency personnel, who wishes to serve as a mediator under this chapter shall file an application with the ultimate authority or its designee describing the type of proceeding in which the person desires to serve as a mediator and setting forth qualifications as required by section 8 of this chapter and the rules adopted under this chapter.

(b) A mediator must reapply if required by the rules.

(c) The administrative law judge assigned to a proceeding may allow mediation teams and co-mediators.

(d) The ultimate authority or its designee that uses mediation for dispute resolution shall maintain a list of approved mediators and the types of proceedings in which each mediator is authorized to serve. A mediator may be removed from the approved list for good cause, after a hearing.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-8

Qualifications of mediator; agreement of parties on mediator

Sec. 8. (a) Except as provided in subsection (b), a person who applies to be a mediator under this chapter must be qualified as a mediator under Rule 2.5 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

(b) Subject to approval of the administrative law judge, the parties may agree on any person to serve as a mediator.

As added by P.L.16-1996, SEC.1. Amended by P.L.114-2008, SEC.1.

IC 4-21.5-3.5-9

Guidelines for mediator selection if parties do not agree

Sec. 9. If rules are adopted under section 2 of this chapter, the rules must include guidelines for selection of a mediator for the ultimate authority when there is no appropriate mediator or listed mediator available and the parties cannot agree on an unlisted mediator.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-10

Choice not to serve as mediator

Sec. 10. A person selected to serve as a mediator under this chapter may choose not to serve for any reason.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-11

Replacement of mediator

Sec. 11. At any time, a party to a proceeding may request that the administrative law judge replace the mediator of the proceeding for good cause.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-12

Effect if mediator chooses not to serve

Sec. 12. If a mediator chooses not to serve or the administrative law judge decides to replace a mediator, the mediator selection process described in this chapter shall be repeated.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-13**Mediator ineligibility**

Sec. 13. A mediator may not be selected to mediate a proceeding if the mediator:

- (1) has an interest in the outcome of the proceeding;
- (2) is related to any of the parties or attorneys in the proceeding;
- or
- (3) is employed by any of the parties or attorneys involved in the proceeding, except that an employee of the agency involved may serve as a mediator if the employee of the agency:
 - (A) has not participated in the investigation or prosecution of the dispute; and
 - (B) does not otherwise have an interest in the outcome of the proceeding.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-14**Mediation costs**

Sec. 14. (a) If the parties to a proceeding elect to use an outside mediator, the costs of mediation must be paid as agreed by the parties. If there is no agreement of the parties, the administrative law judge assigned to the proceeding shall determine the mediation costs, if necessary, and equitably divide the mediation costs among the parties.

(b) To make the determination required by subsection (a), the administrative law judge shall consider the following:

- (1) The complexity of the litigation.
- (2) The skill levels needed to mediate the proceeding.
- (3) The ability of a party to pay.

(c) Mediation costs must be paid not more than thirty (30) days after the mediation is completed unless otherwise agreed among the mediator and the parties.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-15**Continuance of proceedings**

Sec. 15. If a proceeding is selected for mediation, the administrative law judge assigned to the proceeding shall continue the proceeding until the mediation is completed.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-16**Duties of mediator**

Sec. 16. A mediator for a proceeding under this chapter shall:

- (1) inform the parties of the anticipated cost of mediation;
- (2) advise the parties that the mediator does not represent either or both of the parties;
- (3) define and describe the process of mediation to the parties;

- (4) disclose the nature and extent of any relationships with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;
- (5) advise each of the parties to consider independent legal advice;
- (6) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties;
- (7) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure;
- (8) inform the parties that they may introduce the written mediated agreement into evidence if the agreement is signed by all parties to the dispute;
- (9) advise the parties of the time, date, and location of the mediation at least ten (10) days in advance, unless a shorter period is agreed to by the parties; and
- (10) advise the parties of all persons whose presence at the mediation might facilitate settlement.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-17

Individuals present at mediation

Sec. 17. (a) The parties and their attorneys, if any, must be present at any mediation session unless otherwise agreed. A mediator may allow nonparties to the dispute to be present at a mediation session if the parties agree.

(b) All parties, attorneys with settlement authority, representatives with settlement authority, and necessary individuals must be present at each mediation conference to facilitate settlement of a dispute, unless excused by the administrative law judge.

(c) Mediation sessions are not open to the public.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-18

Confidential statements; nonpublic records

Sec. 18. (a) The attorney for a party to a proceeding may submit to the mediator a confidential statement of the proceeding, not to exceed ten (10) pages, before a mediation conference. The statement submitted under this section must include the following:

- (1) The legal and factual contentions of the party.
- (2) The factors considered in arriving at a settlement posture.
- (3) The settlement negotiations to date.

(b) A confidential statement under this section may be supplemented by exhibits or evidence that must be made available to the opposing party or the opposing party's counsel at least five (5) days before the mediation conference.

(c) A confidential statement is privileged and confidential unless

an agreement by the parties to the contrary is provided to the mediator.

(d) If the mediation process does not result in settlement, any submitted confidential statement must be returned to the submitting attorney or party.

(e) Notwithstanding IC 4-21.5-4-6, the following are not public records or part of the agency record, gathered by the mediator in the course of mediation, in a proceeding:

- (1) A confidential statement.
- (2) Exhibits.
- (3) Evidence.
- (4) Other information.
- (5) Draft settlement documents.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-19

Mediator meetings with parties

Sec. 19. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the proceeding to one (1) or more parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may share revealed settlement authority with other parties or their representatives.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-20

Termination of mediation

Sec. 20. (a) As soon after mediation as practicable, the mediator shall report to the administrative law judge that the mediation process has been completed, terminated, or extended.

(b) The mediator shall terminate mediation whenever:

- (1) the mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or
- (2) the ability or willingness of any party to participate meaningfully in mediation is lacking to the extent that a reasonable agreement is unlikely.

(c) After at least two (2) mediation sessions have been completed, any party may terminate mediation. The mediator may not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned to the proceeding by the administrative law judge for the proceeding.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-21

Failure to reach agreement; requirements for agreement

Sec. 21. (a) If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of an

agreement without comment or recommendation to the administrative law judge assigned to the proceeding. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) An agreement as a result of mediation must be in writing and signed by the parties. The agreement must be filed with the administrative law judge assigned to the proceeding. If the agreement is complete on all issues, it must be accompanied by a joint stipulation of disposition. Upon approval of a joint stipulation of disposition by the administrative law judge, it has the same force and effect as an agreed order approved by an administrative law judge from the agency involved.

(c) An approved joint stipulation of disposition under this chapter is considered a contract between the parties.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-22

Ability to mediate subsequent disputes

Sec. 22. A person who has served as a mediator in a proceeding may act as a mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the mediator on a periodic basis. However, the mediator shall decline to act in any capacity, except as a mediator, unless the subsequent association is clearly distinct from the mediation issues.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-23

Conflicts of interest

Sec. 23. A mediator is required to use an effective system to identify potential conflict of interest at the time of appointment to a proceeding as a mediator. The mediator may not subsequently act as an investigator or make any recommendations regarding the mediated proceeding. A person may not serve as an administrative law judge in a subsequent hearing of a matter in which the person served as a mediator.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-24

Rules of evidence do not apply

Sec. 24. With the exception of privileged communications, the rules of evidence do not apply to mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-25

Limitation of discovery

Sec. 25. Whenever possible, parties to a proceeding are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. By agreement of the parties, or as ordered by the administrative law judge, discovery may be deferred during mediation.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-26**Mediation regarded as settlement negotiation**

Sec. 26. (a) Mediation shall be regarded as a settlement negotiation. Evidence of furnishing or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount is not admissible in a proceeding to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in the course of mediation is not admissible. However, this subsection does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of the mediation process. This subsection does not require exclusion when the evidence is offered for another purpose, such as bias or prejudice of a witness or negating a contention of undue delay.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-3.5-27**Confidential and privileged nature of mediation**

Sec. 27. (a) A mediator is not subject to process requiring disclosure of any matter discussed during the mediation. Matters discussed during mediation are confidential and privileged.

(b) The confidentiality requirement of subsection (a) may not be waived by the parties.

(c) An objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator.

As added by P.L.16-1996, SEC.1.

IC 4-21.5-4

Chapter 4. Special Proceedings; Emergency and Other Temporary Orders

IC 4-21.5-4-1

Circumstances warranting special proceedings

Sec. 1. An agency may conduct proceedings under this chapter if:

- (1) an emergency exists; or
- (2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-4-2

Procedures; orders

Sec. 2. (a) The agency shall issue the order under this chapter by one (1) of the following procedures:

- (1) Except as provided in IC 25-1-9-10, without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.
- (2) After a hearing conducted by an administrative law judge.

(b) The resulting order must include a brief statement of the facts and the law that justifies the agency's decision to take the specific action under this chapter.

As added by P.L.18-1986, SEC.1. Amended by P.L.43-1995, SEC.1.

IC 4-21.5-4-3

Notice; effectiveness of order

Sec. 3. The agency shall give such notice as is practicable to persons who are required to comply with the order under this chapter. The order is effective when issued.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-4-4

Hearings

Sec. 4. Upon a request by a party for a hearing on an order rendered under section 2(a)(1) of this chapter, the agency shall, as quickly as is practicable, set the matter for an evidentiary hearing. An administrative law judge shall determine whether the order under this chapter should be voided, terminated, modified, stayed, or continued.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-4-5

Expiration of order; exception

Sec. 5. (a) Except as provided in subsection (c), an order issued under this chapter expires on the earliest of the following:

- (1) The date set in the order.
- (2) The date set by a statute other than this article.
- (3) The elapse of ninety (90) days.

(b) During the pendency of any related proceedings under IC 4-21.5-3, the agency responsible for the proceeding may renew the order for successive ninety (90) day periods unless a statute other than this article prohibits the renewal of the order.

(c) An order issued under this chapter and IC 15-17-6 does not expire.

As added by P.L.18-1986, SEC.1. Amended by P.L.26-1997, SEC.1; P.L.2-2008, SEC.16.

IC 4-21.5-4-6

Records

Sec. 6. The agency record in a proceeding under this chapter consists of any documents regarding the matter that were considered or prepared by the agency in a proceeding under section 2(a)(1) of this chapter and, if a hearing is conducted under section 2(a)(2) or 4 of this chapter, the items described in IC 4-21.5-3-33.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5

Chapter 5. Judicial Review

IC 4-21.5-5-1

Exclusive means for judicial review; exceptions

Sec. 1. Except as provided in IC 22-9 and IC 22-9.5, this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.17; P.L.14-1994, SEC.1.

IC 4-21.5-5-2

Petition; persons entitled to judicial review

Sec. 2. (a) Judicial review is initiated by filing a petition for review in the appropriate court.

(b) Only a person who qualifies under:

- (1) section 3 of this chapter concerning standing;
- (2) section 4 of this chapter concerning exhaustion of administrative remedies;
- (3) section 5 of this chapter concerning the time for filing a petition for review;
- (4) section 13 of this chapter concerning the time for filing the agency record for review; and
- (5) any other statute that sets conditions for the availability of judicial review;

is entitled to review of a final agency action.

(c) A person is entitled to judicial review of a nonfinal agency action only if the person establishes both of the following:

- (1) Immediate and irreparable harm.
- (2) No adequate remedy exists at law. (The failure of a person to comply with the procedural requirements of this article may not be the basis for a finding of an inadequate remedy at law.)

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-3

Standing

Sec. 3. (a) The following have standing to obtain judicial review of an agency action:

- (1) A person to whom the final agency action is specifically directed.
- (2) A person who was a party to the proceedings of the ultimate authority that led to the final agency action, including the agency whose order was under review in the proceeding.
- (3) A person eligible for standing under a law applicable to the final agency action.
- (4) A person otherwise aggrieved or adversely affected by the

final agency action.

- (b) A person has standing under subsection (a)(4) only if:
- (1) the final agency action has prejudiced or is likely to prejudice the interests of the person;
 - (2) the person:
 - (A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or
 - (B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;
 - (3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
 - (4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the final agency action.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.18; P.L.178-2002, SEC.1; P.L.219-2007, SEC.5; P.L.72-2014, SEC.6.

IC 4-21.5-5-4

Exhaustion of administrative remedies; waiver of right to review

Sec. 4. (a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review.

- (b) A person who:
- (1) fails to timely object to an order or timely petition for review of an order within the period prescribed by this article; or
 - (2) is in default under this article;

has waived the person's right to judicial review under this chapter.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-5

Time for filing

Sec. 5. Except as otherwise provided, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-6

Venue

Sec. 6. (a) Venue is in the judicial district where:

- (1) the petitioner resides or maintains a principal place of business;
- (2) the agency action is to be carried out or enforced; or
- (3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

As added by P.L.18-1986, SEC.1. Amended by P.L.198-2001, SEC.3; P.L.219-2007, SEC.6.

IC 4-21.5-5-7

Petition; filing; contents

Sec. 7. (a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

- (1) The name and mailing address of the petitioner.
- (2) The name and mailing address of the agency whose action is at issue.
- (3) Identification of the agency action at issue, together with a copy, summary, or brief description of the agency action.
- (4) Identification of persons who were parties in any proceedings that led to the agency action.
- (5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 2 of this chapter.
- (6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 14 of this chapter.
- (7) A request for relief, specifying the type and extent of relief requested.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.19.

IC 4-21.5-5-8

Service; rules of procedure

Sec. 8. (a) A petitioner for judicial review shall serve a copy of the petition upon:

- (1) the ultimate authority issuing the order;
- (2) the ultimate authority for each other agency exercising administrative review of the order;
- (3) the attorney general; and
- (4) each party to the proceeding before an agency;

in the manner provided by the rules of procedure governing civil actions in the courts. If the ultimate authority consists of more than one (1) individual, service on the ultimate authority must be made to the secretary or chairperson of the ultimate authority.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review to all other parties in any proceedings that led to the agency action.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-9

Stay of order pending court decision

Sec. 9. (a) If a petition for judicial review concerns a matter other than an assessment or determination of tax due or claimed to be due the state, and the law concerning the agency whose order is being reviewed does not preclude a stay of the order by the court, the person seeking the review may seek, by filing a verified petition, an order of the court staying the action of the agency pending decision by the court. The court may enter an order staying the agency order pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the order or determination appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the order of the agency if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars (\$500).

(b) If a petition for review concerns a revocation or suspension of a license and the law governing the agency permits a staying of the action of the agency by court order pending judicial review, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the determination of the agency is approved on final determination, the revocation or suspension of the license immediately becomes effective.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.20.

IC 4-21.5-5-10

Issues not raised before agency

Sec. 10. A person may obtain judicial review of an issue that was not raised before the agency, only to the extent that:

(1) the issue concerns whether a person who was required to be notified by this article of the commencement of a proceeding was notified in substantial compliance with this article; or

(2) the interests of justice would be served by judicial

resolution of an issue arising from a change in controlling law occurring after the agency action.
As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.21.

IC 4-21.5-5-11

Fact issues confined to record

Sec. 11. Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the agency.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-12

Evidence; remand to agency for further factfinding

Sec. 12. (a) The court may receive evidence, in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

- (1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action.
- (2) Unlawfulness of procedure or of decision-making process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the agency before final disposition of a petition for review with directions that the agency conduct further factfinding or that the agency prepare an adequate record, if:

- (1) the agency failed to prepare or preserve an adequate record;
- (2) the agency improperly excluded or omitted evidence from the record; or
- (3) a relevant law changed after the agency action and the court determines that the new provision of law may control the outcome.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-5-13

Transmittal of agency record; costs; corrections or additions

Sec. 13. (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of:

- (1) any agency documents expressing the agency action;
- (2) other documents identified by the agency as having been considered by it before its action and used as a basis for its

action; and

(3) any other material described in this article as the agency record for the type of agency action at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the agency taking the action being reviewed shall prepare the agency record for the petitioner. If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

(d) Notwithstanding IC 5-14-3-8, the agency shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-37-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 12 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

As added by P.L.18-1986, SEC.1. Amended by P.L.11-1987, SEC.6; P.L.3-1989, SEC.24; P.L.98-2004, SEC.47.

IC 4-21.5-5-14

Burden of proof; standards of review

Sec. 14. (a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.22.

IC 4-21.5-5-15

Disposition

Sec. 15. If the court finds that a person has been prejudiced under section 14 of this chapter, the court may set aside an agency action and:

- (1) remand the case to the agency for further proceedings; or
- (2) compel agency action that has been unreasonably delayed or unlawfully withheld.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.23.

IC 4-21.5-5-16

Decisions on petitions; appeal

Sec. 16. Decisions on petitions for review of agency action are appealable in accordance with the rules governing civil appeals from the courts.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-6

Chapter 6. Civil Enforcement

IC 4-21.5-6-1

Court order for enforcement

Sec. 1. In addition to any other remedy provided by law:

- (1) an agency in its own name;
- (2) an agency in the name of the state;
- (3) the attorney general in the name of the attorney general; or
- (4) the attorney general in the name of the state at the request of an agency;

may apply for a court order in a circuit or superior court to enforce an order issued under this article by a verified petition for civil enforcement.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-6-2

Enforcement of subpoenas, discovery orders, and protective orders

Sec. 2. (a) This section applies only to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Any party to a proceeding before an agency who has obtained an order from an administrative law judge may apply for a court order in a circuit or superior court to enforce the subpoena or order issued by an agency by a verified petition for civil enforcement. Notice of an application under this section shall be given:

- (1) to the administrative law judge issuing the order;
- (2) to the attorney general; and
- (3) to each party to the proceeding before the agency;

by personal service or by the United States mail at the time the application is filed.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.24.

IC 4-21.5-6-3

Civil actions

Sec. 3. (a) This section does not apply to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Nothing in this chapter limits or precludes civil action under IC 13-30-1.

(c) Any party to a proceeding concerning an agency's order may file a petition for civil enforcement of that order.

(d) The action may not be commenced under this section if:

- (1) less than sixty (60) days has elapsed since the petitioner gave notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(2) the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same defendant; or

(3) a petition for review of the same order has been filed and is pending in court.

(e) The petition under this section must name as defendants each alleged violator against whom the petitioner seeks civil enforcement.

(f) The agency whose order is sought to be enforced is not a party to an action under this section unless the agency moves to intervene. The court shall grant an agency's motion to intervene and shall allow the agency to intervene as a plaintiff or defendant.

(g) The agency whose order is sought to be enforced under this section may move to dismiss on the grounds that the petition fails to qualify under this section or that enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss unless the petitioner demonstrates that:

(1) the petition qualifies under this section; and

(2) the agency's failure to enforce its order is based on an exercise of discretion that is improper on one (1) or more of the grounds provided in IC 4-21.5-5-14.

(h) Except to the extent expressly authorized by law, a petition for civil enforcement filed under this section may not request, and the court may not grant, any monetary payment apart from taxable costs. *As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.25; P.L.1-1996, SEC.26.*

IC 4-21.5-6-4

Naming violators required

Sec. 4. A petition for civil enforcement must name as defendants each alleged violator against whom the party seeks to obtain civil enforcement.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-6-5

Venue

Sec. 5. Venue is determined in accordance with the rules governing civil actions in the courts.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-6-6

Relief granted

Sec. 6. Upon a showing that a person has violated an order issued under this article, the court may grant:

(1) an injunction requested by any petitioner without bond;

(2) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 1 of this chapter without bond;

(3) a subpoena, discovery order, or protective order requested

under section 2 of this chapter without a bond; or
(4) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 3 of this chapter with the bond specified by the court.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-6-7

Appeal

Sec. 7. Decisions on petitions for civil enforcement are appealable in accordance with the rules governing civil appeals from the courts.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-7

Chapter 7. Environmental Adjudication

IC 4-21.5-7-1

"Director" defined

Sec. 1. As used in this chapter, "director" refers to the director of the office of environmental adjudication established by section 3 of this chapter.

As added by P.L.41-1995, SEC.2.

IC 4-21.5-7-2

"Office" defined

Sec. 2. As used in this chapter, "office" refers to the office of environmental adjudication established by section 3 of this chapter.

As added by P.L.41-1995, SEC.2.

IC 4-21.5-7-3

Office of environmental adjudication; duties

Sec. 3. (a) The office of environmental adjudication is established to review, under this article, agency actions of the department of environmental management, actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.

(b) The office of environmental adjudication shall:

(1) conduct adjudicatory hearings required to implement:

(A) air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19;

(B) rules of the board (as defined in IC 13-13-8-1) and the financial assurance board; and

(C) agency action of the department of environmental management; and

(2) notify a board referred to in subdivision (1)(B) of a final order of the office of environmental adjudication that interprets:

(A) a rule of the board; or

(B) a statute under which a rule of the board is authorized.

As added by P.L.41-1995, SEC.2. Amended by P.L.1-1996, SEC.27; P.L.240-2003, SEC.1; P.L.99-2005, SEC.1; P.L.133-2012, SEC.6.

IC 4-21.5-7-4

Employees

Sec. 4. The office consists of the following employees:

(1) A director appointed by the governor who may serve as an environmental law judge.

(2) Environmental law judges, employed by the director.

(3) Any other staff, employed by the director, that are necessary

to carry out the functions of the office.

(b) In the event of a vacancy, the governor shall appoint the director based upon recommendations by a four member (4) panel. Not more than two (2) members of the panel may be affiliated with the same political party. The panel shall consist of:

- (1) one (1) person, who shall serve as the chair of the panel, appointed by the chief justice of the supreme court of Indiana;
- (2) one (1) person appointed by the governor;
- (3) one (1) person appointed by the speaker of the house of representatives;
- (4) one (1) person appointed by the president pro tempore of the senate;

The panel shall nominate three (3) candidates for each vacancy and certify them to the governor as promptly as possible, but not later than sixty (60) days from the date a vacancy occurs. Not later than thirty (30) days after receipt of the panel's list of three (3) candidates, the governor may select one (1) candidate from the panel's list, or the governor may request that the panel nominate three (3) additional candidates. The panel shall meet whenever there is a vacancy in the director position.

As added by P.L.41-1995, SEC.2.

IC 4-21.5-7-5

Decisions reviewed by law judge

Sec. 5. (a) Except as provided in IC 14-10-2-2.5, an environmental law judge is the ultimate authority under this article for reviews of agency actions of the department of environmental management, actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.

(b) An environmental law judge under this chapter has the same authority and responsibilities as an administrative law judge.

As added by P.L.41-1995, SEC.2. Amended by P.L.99-2005, SEC.2; P.L.84-2008, SEC.1; P.L.32-2011, SEC.7.

IC 4-21.5-7-5.5

Consolidated proceedings

Sec. 5.5. A proceeding that is subject to the jurisdiction of both the office and the natural resources commission's division of hearings established under IC 14-10-2-2 may be consolidated under IC 14-10-2-2.5.

As added by P.L.84-2008, SEC.2.

IC 4-21.5-7-6

Qualifications of law judge and director; appointment of special judge

Sec. 6. (a) An environmental law judge hired after July 1, 1995, and the director must:

- (1) be attorneys admitted to the bar of Indiana;
- (2) have at least five (5) years of experience practicing administrative or environmental law in Indiana;
- (3) be independent of the department of environmental management; and
- (4) be subject to all provisions applicable to an administrative law judge under this article.

(b) The director may appoint a special environmental law judge. The special environmental law judge must meet the requirements of subsection (a).

As added by P.L.41-1995, SEC.2. Amended by P.L.99-2005, SEC.3; P.L.100-2012, SEC.5.

IC 4-21.5-7-7

Powers of office

Sec. 7. The office may:

- (1) adopt forms; and
- (2) establish procedural rules IC 4-22-2;

consistent with this article.

As added by P.L.41-1995, SEC.2.

IC 4-21.5-7-8

Proposed budget; payment of expenses

Sec. 8. (a) The director shall prepare the proposed budget for the office.

(b) The expenses of the office shall be paid from money allotted to the office of environmental adjudication to maintain the office.

As added by P.L.41-1995, SEC.2. Amended by P.L.25-1997, SEC.2.

IC 4-21.5-7-9

Receipt and acceptance of gifts

Sec. 9. The office, on behalf of the state, may accept and receive from any source gifts and other funds that are made available to the state for the purposes of this chapter.

As added by P.L.25-1997, SEC.3.